

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4418 of 1997

Date of decision: 9-9-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SATVARA KANKUBEN DAYABHAI

Versus

GSRTC

Appearance:

MR AR SHAIKH for Petitioner
MR KS JHAVERI for Respondent No. 1
None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/98

ORAL JUDGEMENT

This appeal is directed by the claimant appellant against the award of the Motor Accident Claims Tribunal, Jamnagar, in claim application No. 60 of 1993 decided on 15th July, 1997. Under the impugned award the Tribunal has awarded Rs.10,500/- as compensation to the claimant appellant for the injury which he has sustained in the motor vehicular accident with proportionate cost and interest at the rate of 12% per annum from the date of the petition till payment. This award has been passed against both the owner of the vehicle and the driver.

2. The facts of the case in brief are that the applicant was walking towards Dhediya Nala and at that time she was knocked down by S.T. Bus No.GRU 6229 which was being driven rashly and negligently by the driver respondent No.2 herein. The vehicle belongs to and owned by the Gujarat State Road Transport Corporation. As a result of this accident the applicant -appellant sustained serious injuries in her leg and spinal cord, and she was treated in Irwin Hospital, Jamnagar. She filed claim application, claiming compensation of Rs.75,000/- on account of injury sustained by her in the aforesaid accident. Under the impugned award Rs.10,500/has been awarded as compensation under different heads as under:

Rs. 7,000/- for pain, shock and suffering.
Rs. 1,000/- for medicine, treatment and expenses.
Rs. 1,000/- towards special diet.
Rs. 1,500/- actual loss of income.

Rs.10, 500/- Total

On the record of the Tribunal, in this case the claimant - appellant produced document Exh.28 and it is the certificate given by Dr. M. S. Dangar, M.S. Orthopaedic Surgeon, Jamnagar. The doctor found that the applicant appellant had permanent partial functional disability of 30% in relation to the body as a whole. I find another document on the record of the proceedings, i.e. Exh.27, a pursis which reads as under:

"On behalf of Applicant respectfully submitted
that in this case the Disability certificate in respect of 30% permanent disability is given to the applicant by the Doctor. However, there is no objection if the 10% permanent disability body as a whole is taken into consideration."

Learned counsel for the respondent contended that this pursis has been filed by the applicant - appellant herself. From this document I find that this pursis has been filed by the advocate of the claimant- appellant and the advocate of the driver - respondent No.2. By this pursis it has been given out that though there was permanent partial functional disability of 30% body as a whole, the applicant has given out that she has no objection if 10% permanent partial disability of the body as a whole is taken into consideration. Still the Tribunal has not even awarded compensation for the future loss by taking into consideration the permanent partial functional disability of the body of the applicant as a whole to the extent of 10%. Under the head of future economic loss not a single paisa has been awarded. Learned counsel for the appellant contended that the pursis Exh.27 has not been passed by the claimant appellant, and that has been done by her advocate and the advocate of respondent No.2. This pursis has been given by the advocate who is not a medical expert in the matter.

3. On the other hand learned counsel for the respondents contended that this pursis was voluntarily given and the Tribunal has not committed any error in referring to it. It has next been contended that it has always been open to the claimant to give up their claim, and in case the claimant has given up her claim of future economic loss to the extent of 20% permanent partial functional disability, no exception maybe taken by this Court. Carrying this contention further, learned counsel for the respondents contended that even if it is taken that this pursis was not passed by the claimant, as it was passed by her advocate it is binding on her. However, learned counsel for the respondent contended that he has no objection in case this court enhances the compensation awarded to the claimant appellant under the head of future economic loss, taking into consideration 10% permanent partial functional disability of the body as a whole.

4. On being asked by the court, learned counsel for the respondent fairly submitted that this pursis has been passed as the advocate wanted early disposal of the matter so that the claimant would have got the amount of compensation immediately; otherwise to prove the medical certificate she has to examine the doctor. I fail to see any justification in the matter, particularly in the matter pertaining to claim of compensation for injuries caused in motor vehicular accident, and its disposal in the way and manner it is done in the present case by the

advocate of the claimant appellant. It is the duty of the advocate as well as the concerned court to see that the victim of the motor vehicular accident in the case of injuries, and heirs and legal representatives of the of the person who dies in the accident get just, adequate and reasonable compensation. This approach of the disposal of this claim application to ward compensation much less than what for otherwise the claimant would have been entitled to, in the garb of disposal of the matter is not in consonance with the objects and purpose for which the benevolent provisions are enacted. Passing of the pursis by the advocate and more so in matter where it pertains to medical expert opinion, results in depriving of just and reasonable compensation to be awarded under the head of future economic loss deserves to be deprecated. It is the advocate who has to advise the client properly and in such a manner that the client will not suffer any loss of amount of compensation, which he or she is legally entitled to. It is well known say that by awarding compensation the Tribunals are not doing anything except providing some solace to the loss of the bread-earners in case of death or disability sustained in the case of injury. There cannot be any law or anything in the hands of the court to compensation the victims of the accident in a case of injuries and the dependents and heirs and legal representatives of the persons who died in the motor vehicular accident to compensate them for the real loss suffered. However, by giving this compensation they have been provided some financial help so that after death of their only bread earner, or to the victim in case of disability sustained, they may not face any financial difficulty. If that is the object and purpose, then this way of giving up claim certainly cannot be said to be in consonance with the purpose and object of the Act. I do not find anything on the record of the case that this pursis has been passed with the consent of the claimant-appellant. From the memo of the appeal I find that the claimant- appellant has not accepted this passing of pursis, but she has insisted it to be a case of permanent partial functional disability to the claimant appellant to the extent of 30% of the body as a whole. Original of this document has been perused by me and I do not find anything thereon that this was voluntarily and freely passed by the claimant appellant or by her advocate with her consent. Otherwise also I have my own reservation in passing such a pursis in such matter. Even if such pursis has been passed, it is not correct to urge that the court has no option except to act upon it. Be that as it may.

5. The whole approach of the Tribunal in this case

otherwise is also perverse. Even if it is taken that this pursis could have been acted upon, still the Tribunal should have awarded future economic loss taking it to be a case of permanent partial functional disability of 10% in relation to the body as a whole. Instead of that the Tribunal, observed that the claimant - appellant had got no functional disability at all, and after giving this finding it has reached to the conclusion that she is not entitled to claim any compensation on account of future economic loss. The appellant - claimant at the most has given up her claim to the extent of 20% of permanent partial functional disability in relation to the body as a whole, but by this pursis conclusion is drawn by the Tribunal that she has got no functional disability. This finding is nothing but total perverse approach of the Tribunal.

6. The earning of the claimant - appellant as a labourer was Rs.25 per day. That income has been accepted by the Tribunal. She was doing labour work and any permanent partial functional disability would certainly materially and substantially impair her working capacity and efficiency, both present and future. Her monthly income comes to Rs.750/-. She was examined by the Tribunal on 9-7-1997. She has given her age as 45 years. So on the date of the accident her age was 40 years. Looking to her age, in this case the multient can be taken at Rs.9000/- per year, and multiplier of 15 can be applied. So the total compensation under the head of future economic loss comes to Rs.1,35,000/-.

7. The next question which arise for consideration of this court is whether the permanent partial functional disability of 30% or 10% in relation to the body as a whole has to be taken. If we go by the pursis and accept that the claimant - appellant could have given up her claim, it has to be taken to be 10%, but otherwise it has to be taken to be 30%. Delay in disposal of the accident claim cases causes manifold difficulties, inconvenience and sufferings to the claimants. The accident in this case has occurred on 7th September, 1992. It appears that up to 5th July, 1997 nothing materially has been proceeded in this case. This delay in disposal of this accident claim matters some time may prompt one to pass such pursis for the purpose of getting the money though it maybe much less than what the real amount of compensation should have been awarded. Time and again it is stated by the courts that these categories of cases are to be given priority and disposed of expeditiously so that this type of situation may not be created and the victim of the motor vehicular accident may get real,

substantive, adequate and reasonable compensation.

8. I fail to see why the pursis Exh.27 has been passed over to the court by non other than the advocates of the claimant- appellant and the driver. It is not a matter of fact or some fixed amount to give up part of the claim. This matter pertains to opinion of medical experts that as a result of the vehicular accident the claimant appellant has suffered partial permanent functional disability of 30 of the body as a whole. It is no more res integra that any concession given by the advocate on the question of law is not binding on the party. The same principle can conveniently be made applicable to the case where concession is being made by the advocate to the expert opinion. In the present case this pursis has not been passed by the claimant herself, nor it appears to have been passed by the advocate with her consent. Such a pursis given on the medical expert's opinion by the advocate is not binding on the claimant and the Tribunal should have taken it to be a case of 30% permanent partial functional disability of the body of the claimant as a whole. This expert opinion has not been controverted by the other side. This document is there on the record and unless it is controverted by the other side it could have been relied without examination of the doctor. It is a different case where the other side controvert the expert opinion and insist for calling of the doctor concerned for cross examination. It is not the case here. So taking into consideration the totality of the facts of this case the pursis passed by the claimant appellant cannot be given effect to and for the purpose of determining the future economic loss, the permanent partial functional disability of the claimant's body as a whole has to be taken to be 30%. Taking 30% of the amount of Rs.1,35,000/- under the head of future economic loss, the applicant is entitled to Rs.40,500/-.

9. In the result this appeal is partly allowed. In addition to the amount of compensation awarded by the Tribunal, additional compensation of Rs.40,500/- under the head of future economic loss is ordered to be paid by the respondents to the claimant -appellant. The claimant appellant shall be entitled to interest on this amount of additional compensation at the rate of 12% from the date of filing of the claim application till the date of realisation thereof. The respondents are further directed to pay to the claimant an amount of Rs.1,000/by way of cost of this appeal.

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